

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9  
75 Hawthorne Street  
San Francisco, CA 94105-3901**

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## **I. JURISDICTION**

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-E. Within EPA Region IX, this authority has been delegated to the Superfund Division Director by a Regional Order 1290.21A entitled "De Minimis Settlements," dated November 23, 1998 and redelegated to the Superfund Branch Chief (now titled, Assistant Director) by EPA Regional Order R9 1290.21B. The State has jurisdiction over the matters set forth herein pursuant to the Hazardous Substances Account Act, Health and Safety Code § 25300 et seq., and California Civil Code § 3494.

2. This Settlement Agreement is issued to the persons, corporations, or other entities identified in Appendix C ("Respondents") and the National Aeronautics and Space Administration ("Settling Federal Agency"). Each Respondent and Settling Federal Agency agrees to undertake all actions required by this Settlement Agreement. Each Respondent and Settling Federal Agency further consents to and will not contest EPA's jurisdiction to issue this Settlement Agreement or to implement or enforce its terms.

3. EPA, Respondents, and Settling Federal Agency agree that the actions undertaken by Respondents and Settling Federal Agency in accordance with this Settlement Agreement do not constitute an admission of any liability by any Respondent or Settling Federal Agency. Respondents and Settling Federal Agency do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the Statement of Facts or Determinations contained in Sections IV and V, respectively, of this Settlement Agreement.

## **II. STATEMENT OF PURPOSE**

4. By entering into this Settlement Agreement, the mutual objectives of the Parties are:

a. With respect to the Respondents and Settling Federal Agency identified in Appendix A, "Tier I Respondents," as provided in Section X (Tier I De Minimis Covenants), and subject to the applicable reservations and conditions of this Settlement Agreement:

(1). to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows these Respondents and Settling Federal Agency to make a cash payment, including a premium, to resolve their alleged civil

liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

(2). to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a substantial number of potentially responsible parties from further involvement at the Site;

(3). to obtain settlement with these Respondents who are not Settling ATP Respondents and Settling Federal Agency for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by other persons, and to provide for full and complete contribution protection for these Respondents and Settling Federal Agency with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5); and

(4). To reach an expedited settlement with Settling ATP Respondents for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by other persons, reduced in consideration of their demonstration of an inability or limited ability to pay response costs pursuant to Section 122(g)(7) of CERCLA, 42 U.S.C. § 9622(g)(7), and to provide for full and complete contribution protection for the Settling ATP Respondents with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

b. With respect to the Respondents identified in Appendix B, "Tier II Respondents," as provided in Section XI (Tier II De Minimis Covenants), and subject to the applicable reservations and conditions of this Settlement Agreement:

(1). to reach a settlement among the Parties with respect to the Site pursuant to Section 122(g), that allows these Respondents to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607 and Section 7003 of RCRA, 42 U.S.C. § 6973, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, subject to certain reservations regarding unknown conditions or information, thereby reducing litigation relating to the Site;

(2). to simplify the remaining administrative and judicial enforcement activities concerning the Site by significantly reducing the further involvement of a substantial number of parties;

(3). to obtain settlement with these Respondents for their fair share of response costs incurred and to be incurred at or in connection with the Site by the Hazardous Substance Superfund and by private parties, and to provide for contribution protection for these

Respondents with regard to the Site, subject to certain reservations regarding unknown conditions or information, pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

### III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Settlement Agreement, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. "De Micromis" party shall mean any person (i) whose liability with respect to the Site is based solely on CERCLA Section 107(a)(3) or (4), 42 U.S.C. § 9607 (a)(3) or (4), and (ii) who the U.S. EPA determines arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of less than 4,200 gallons of materials containing hazardous substances, except where the U.S. EPA determines that the hazardous substances contributed by such person are significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

d. "De Minimis" party shall mean any person (i) whose liability with respect to the Site is based solely on CERCLA Section 107(a)(3) or (4), 42 U.S.C. § 9607 (a)(3) or (4), and (ii) who the U.S. EPA determines arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of less than 110,000 gallons of materials containing hazardous substances, except where the U.S. EPA determines that the hazardous substances contributed by such person are significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

e. "DTSC" shall mean the California Department of Toxic Substances Control.

f. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XX.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.



h. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

i. "Final Remedy" shall mean the remedies selected in the Final ROD and the Gas Control and Cover ROD for the OII Site, including any amendments or modifications that may have been or may be made to those RODs.

j. "Final ROD" shall mean the Final Record of Decision for the OII Site, signed by the Region IX Superfund Division Director on September 30, 1996.

k. "Gas Control and Cover ROD" shall mean the Record of Decision relating to the Gas Migration Control and Landfill Cover operable unit at the OII Site, signed by the Region IX Deputy Regional Administrator on September 30, 1988, as amended on September 28, 1990.

l. "Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

m. "HSAA" shall mean the California Hazardous Substance Account Act, California Health and Safety Code Sections 25300 et seq.

n. "HWCL" shall mean the Hazardous Waste Control Law, California Health & Safety Code Sections 25100 et seq.

o. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

p. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

q. "Parties" shall mean EPA, DTSC, the State Accounts, Settling Federal Agency and the Respondents.

r. "RCRA" shall mean the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. § 6901 et seq.

s. "Remedial Action" shall mean those activities taken or to be undertaken to implement the Gas Control and Cover ROD and/or the Final ROD for the OII Site, in accordance with the Statements of Work, the final Remedial Designs and Remedial Action Work Plans and other plans approved or to be approved by the U.S. EPA.

t. "Respondents" shall mean those persons, corporations, or other entities listed in Appendix C other than Settling Federal Agency.

u. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

v. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

w. "Settlement Agreement" shall mean this Settlement Agreement and Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

x. "Settling ATP Respondents" are those Respondents identified in Appendix E who have submitted financial information demonstrating an inability or limited ability to pay response costs and, as such, have qualified for a reduced settlement amount and/or alternative payment method as provided in Section VII of the Settlement Agreement (Payment).

y. "Settling Federal Agency" shall mean the National Aeronautics and Space Administration, including the contractors operating the Jet Propulsion Laboratory, a federally funded research and development center and national laboratory.

z. "State Accounts" shall mean the California Hazardous Substance Account, the California Hazardous Waste Control Account, the California Toxic Substances Control Account and the California Site Remediation Account, and any predecessors and successors to those accounts, to the extent that funds have been or will be expended from those accounts on behalf of DTSC.

aa. "State Covenant Providers" shall mean DTSC, the State Accounts and the Attorney General of California with respect to his Authority under Government Code Sections 12612 through 12660.

bb. "OII Site" or the "Site" shall mean the "facility," as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and shall mean the landfill located at 900 Potrero Grande Drive in Monterey Park, California, and all associated areas where contamination emanating from the landfill has come or comes to be located.

cc. "Tier I De Minimis Covenants" shall mean the Covenants Not to Sue by the United States in Section X (Tier I De Minimis Covenants Not to Sue by the United States).

dd. "Tier II De Minimis Covenants" shall mean the Covenants Not to Sue by the United States in Section XI (Tier II De Minimis Covenants Not to Sue by the United States).

ee. "United States" shall mean the United States of America, and each department, agency and instrumentality of the United States, including EPA.

#### **IV. STATEMENT OF FACTS**

6. The Operating Industries, Inc. landfill is a 190 acre facility located at 900 Potrero Grande Drive, Monterey Park, California.

a. The Site operated from 1948 through 1984. Over the course of its operation, the landfill accepted industrial solid, liquid and hazardous wastes, as well as municipal solid waste. Wastes accepted by the landfill include hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and California Health and Safety Code §§ 25316 and 25317. The list of contaminants found at the site include, but are not limited to, contaminants attached to and incorporated into this Settlement Agreement as Appendix D.

b. The Site is located on the southwestern flank of the La Merced Hills (also called the Montebello Hills) and is divided by California Highway 60 (Pomona Freeway), which runs roughly east-west through the Site, dividing it into a 45 acre North Parcel and 145 acre South Parcel. The Site is located at the boundary between the San Gabriel groundwater basin to the north and the Los Angeles Central groundwater basin to the south. The important water-bearing units underlying the Los Angeles and San Gabriel Basins, as well as the Site, are from oldest to youngest: upper Pliocene Pico Formation; lower Pleistocene San Pedro Formation; upper Pleistocene older alluvium (including "terrace gravels"); and the Recent Alluvium. The San Pedro Formation contains the five major aquifers of the Los Angeles Central Basin and the San Gabriel Basin: the Jackson, Hollydale, Lynwood, Silverado and Sunnyside aquifers. The lower Pliocene Repetto formation and older formations are found at depths greater than 1500 feet. The Site is approximately one mile west of the Whittier Narrows groundwater recharge area and the Rio Hondo River.

c. The Site was proposed for inclusion on the National Priorities List ("NPL") in October 1984 and was subsequently placed on the NPL in May 1986, in accordance with Section 105(a)(8) of CERCLA, 42 U.S.C. § 9605(a)(8), as set forth at 40 C.F.R. Part 300, Appendix B.

d. There have been releases of hazardous substances from the Site, and the Site poses numerous threats to human health and the environment. The population in proximity to the Site includes the nearby residents of the City of Montebello and the City of Monterey Park, those who travel on the section of the Pomona Freeway that transects the Site, and workers in the several businesses located on or near the Site.

e. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA has completed the Remedial Investigation ("RI"), the Feasibility Study ("FS"), the Proposed Plan, and the Final Record of Decision (the "Final ROD") for the Site, pursuant to 40 C.F.R. § 300.430.



f. EPA has identified four operable units to date: Site Control and Monitoring ("SCM"); Leachate Management ("LM"); Gas Migration Control and Landfill Cover ("Gas Control and Cover"); and Final Remedy ("Final Remedy Operable Unit"), this last of which incorporates perimeter liquids control, natural attenuation of contaminated groundwater, and long-term operation and maintenance. The first two operable units (SCM and LM) were the subject of two interim Records of Decision ("RODs"). The work required by those interim RODs was the subject of two prior settlements, memorialized in two partial consent decrees. The first settlement is captioned United States et al. v. Chevron Chemical Company, et al., No. CV 88-7196-MRP(Kx), and was entered on May 11, 1989 (the "First Decree"). The second settlement is captioned United States, et al. v. American Petrofina Exploration Co., et al., No. CV 88-7196-MRP(Kx), and was entered on September 17, 1991 (the "Second Decree").

g. A third partial consent decree, captioned United States, et al. v. Chevron Chemical Company, et al., No. CV 91-6520-MRP(Kx), was entered on March 30, 1992 (the "Third Decree"). The Third Decree addresses a portion of the work required by the Record of Decision for the Gas Control and Cover Operable Unit (the "Gas Control and Cover ROD"). The Gas Control and Cover ROD, unlike the previous two interim RODs, is a final ROD and represents a significant portion of the final remedy for the Site. Parties to the Third Decree are performing a major portion of the Gas Control and Cover ROD and some operation and maintenance as provided in that ROD. At the termination of the Third Decree, additional operation and maintenance provided in that ROD will be performed under the eighth partial consent decree.

h. On December 21, 1992, EPA, the State and the United States Department of the Navy ("Navy") entered into an Administrative Settlement (EPA CERCLA Docket No. 92-19), under which the Navy resolved its liability for matters addressed in the First Decree and the Third Decree.

i. On November 2, 1993, EPA issued a unilateral administrative order ("UAO 94-01") pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, requiring certain response activities at the Site in cooperation with EPA and the other persons performing work at the Site.

j. A fourth partial consent decree, resolving the alleged liability of certain municipalities and transporters and the California Department of Transportation for arranging for disposal or for transport for disposal of municipal solid waste, was entered on April 4, 1995, captioned United States, et al. v. City of Monterey Park, et al., No. CV 94-8685 WMB(GHKx) (the "Fourth Decree").

k. A fifth partial consent decree, addressing the same subject matter as the First Decree and the Third Decree, incorporating new defendants, including the recipients of UAO 94-01, was entered on July 10, 1996, captioned United States, et al. v. IT Corporation, et al., No. CV 96-1959 WMB(JRx) (the "Fifth Decree").

l. On March 7, 1997, EPA issued a unilateral administrative order ("UAO 97-02") pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, requiring certain response activities at the Site in cooperation with EPA and the other persons performing work at the Site.

m. A sixth partial consent decree, captioned United States et al. v. Air Products and Chemicals, Inc., et al., Action No. CV 97-5440 MRP, resolving the liability of certain operator defendants, was entered on September 23, 1997 (the "Sixth Decree").

n. A seventh partial consent decree, captioned United States et al. v. Operating Industries, Inc., et al., Action No. CV00-08794 SVW, resolving the liability of certain owner/operator defendants and incorporating provisions for redevelopment of a portion of the Site, was entered on October 10, 2000 (the "Seventh Decree").

o. An eighth partial consent decree, captioned United States et al. v. Chevron Environmental Management Company, et al., Action No. CV 01-11162 MMM (JWJx) ("Eighth Decree") was entered on May 28, 2002. The Eighth Decree addressed, among other things, the work required by the Final ROD for the Final Remedy Operable Unit, including the long-term operation and maintenance of facilities constructed under the Gas Control and Cover ROD, to the extent those activities were not addressed under the Third Decree and the Seventh Decree. The Eighth Decree also resolved the liability of certain generators of waste for the Matters Addressed by the Eighth Decree.

p. A ninth partial consent decree, captioned United States et al. v. Ameron International Corp. et al., Action No. CV09-8719 MRP (Cwx) ("Ninth Decree") was entered on March 26, 2010. The Ninth Decree resolved the liability of certain generators of waste for the Matters Addressed by the Eighth Decree.

7. Hazardous substances have been or are threatened to be released at or from the Site.

8. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future.

9. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

10. Each Respondent listed on Appendix C, and Settling Federal Agency, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such Respondent or Settling Federal Agency, by any other person or entity, at the Site, or accepted a hazardous substance for transport to the Site which was selected by such Respondent or Settling Federal Agency.

11. The amount of hazardous substances contributed to the Site by each Respondent and Settling Federal Agency does not exceed 110,000 gallons of materials containing hazardous substances, and the hazardous substances contributed by each Respondent and Settling Federal Agency to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site. The United States has reviewed the Financial Information submitted by Settling ATP Respondents to determine whether they have an inability or a limited ability to pay response costs incurred and to be incurred at the Site, taking into consideration the ability of such parties to pay response costs and still maintain their basic business operations, including their overall financial condition and demonstrable constraints on their ability to raise revenues.

12. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by other persons is approximately \$700 million. The payment required to be made by each Respondent and Settling Federal Agency pursuant to this Settlement Agreement is a minor portion of this total amount.

#### **V. DETERMINATIONS**

13. Based upon the Statement of Facts set forth above and on the administrative record for this Site, EPA has determined that:

a. The Operating Industries, Inc., site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Each Respondent and Settling Federal Agency is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Each Respondent and Settling Federal Agency is a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

d. There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

e. The actual or threatened "release" caused the incurrence of response costs.

f. Prompt settlement with each Respondent and Settling Federal Agency is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

g. As to each Respondent and Settling Federal Agency, this Settlement Agreement involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

h. The amount of hazardous substances contributed to the Site by each Respondent and Settling Federal Agency and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Respondent and Settling Federal Agency are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

i. Based upon the Financial Information provided by Settling ATP Respondents, the United States has determined that Settling ATP Respondents qualify for a reduction in settlement amount and/or an alternative payment method within the meaning of Section 122(g)(7) of CERCLA, 42 U.S.C. § 9622(g)(7), and are able to make the payment(s) specified in Section VII (Payment).

## **VI. SETTLEMENT AGREEMENT AND ORDER**

14. Based upon the administrative record for the Site and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby AGREED TO AND ORDERED:

## **VII. PAYMENT**

15. Within 30 days after the effective date of this Settlement Agreement, each Respondent who is not a Settling ATP Respondent shall pay the amount opposite its, her, or his name in Appendix C to this Settlement Agreement, in accordance with the provisions of this Section. Settling ATP Respondents shall make payments in the amounts and by the dates set forth in Appendix E. With respect to those Settling ATP Respondents who are making payments in installments, each installment, except for the first, on which no interest shall be due, shall include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the effective date of this Settlement Agreement. Settling ATP Respondents may accelerate these payments, and Interest due on the accelerated payments shall be reduced accordingly.

16. As soon as reasonably practicable after the Effective Date of this Settlement Agreement, the United States, on behalf of Settling Federal Agency, shall pay the total of the amounts opposite the name of Settling Federal Agency in Appendix A, in accordance with the provisions of this Section. The Parties to this Settlement Agreement recognize and acknowledge that the payment obligations of the Settling Federal Agency under this Settlement Agreement can only be paid from appropriated funds legally available for such purpose. Nothing in this Settlement Agreement shall be interpreted or construed as a commitment or requirement that the United States, on behalf of Settling Federal Agency, obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

17. Each Respondent's and Settling Federal Agency's payment includes an amount for:  
a) past response costs incurred at or in connection with the Site; b) projected future response



costs to be incurred at or in connection with the Site; and c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any other person, will exceed the estimated total response costs upon which Respondents' payments are based.

18. Each Respondent and the United States, on behalf of Settling Federal Agency, shall make her, his or its respective payment to the Cash Escrow Account established for the OII Site under the Eighth Decree. Payment shall be made by Electronic Funds Transfer ("EFT" or wire transfer), or by certified or cashier's check, directed as follows:

If payment is made by EFT, please send payment to:

Union Bank, N.A.  
 ABA: 122000496  
 Account: 37130196431  
 Account Name: TRUSDG  
 FCC: OII 8<sup>th</sup> Cash Escrow De Minimis Account #6711891501  
 Attn: Marilyn Nguyen, Corporate Trust Department

If payment is made by certified or cashier's check, the Respondent shall send the check to: Jennifer Earle, Union Bank, Corporate Trust Department, 120 South San Pedro Street, Suite 400, Los Angeles, California 90012. The check shall be made payable to OII 8<sup>th</sup> Cash Escrow De Minimis Account and shall include the account number on the check (#6711891501) as set forth in the payment instructions that will be provided by EPA.

19. At the time of payment, each Respondent and Settling Federal Agency shall send notice that such payment has been made to: Keith Olinger, EPA Enforcement Officer, U.S. EPA Region 9, 75 Hawthorne Street, SFD-7-5, San Francisco, CA 94105.

Such notice shall reference the Site/Spill ID Number 0958 and EPA docket number for this action.

### **VIII. FAILURE TO MAKE PAYMENT**

20. If any Respondent who is not a Settling ATP Respondent fails to make full payment within the time required by Paragraph 15, that Respondent shall pay Interest on the unpaid balance. If any Settling ATP Respondent fails to make any payment under Paragraph 15 by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure, and Interest shall continue to accrue on any unpaid amounts until the total amount due has been received. In addition, if any Respondent fails to make full payment as required by Paragraph 15, the United States may, in addition to any other available remedies or sanctions, bring an action against that Respondent seeking injunctive relief to

compel payment and/or seeking civil penalties under Section 122(I) of CERCLA, 42 U.S.C. § 9622(I), for failure to make timely payment.

21. In the event that the United States' payment required by Paragraph 16 is not made within 120 days after the Effective Date, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the 121<sup>st</sup> day after the Effective Date and accruing through the date of payment.

#### **IX. CERTIFICATION OF RESPONDENTS AND SETTLING FEDERAL AGENCY**

22. By signing this Settlement Agreement, each Respondent certifies, individually, that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. has and will comply fully with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

d. each Settling ATP Respondent further certifies individually that it has submitted Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling ATP Respondent executes this Settlement Agreement.

23. The United States acknowledges that Settling Federal Agency (a) is subject to all applicable Federal record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA and DTSC requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 307 of RCRA, 42 U.S.C. § 6927, and state law.

# **X. TIER I DE MINIMIS COVENANT NOT TO SUE BY UNITED STATES**

24. In consideration of the payments that will be made under the terms of this Settlement Agreement by the Respondents identified in Appendix A, "Respondents Selecting Tier I Covenants", and except as specifically provided in Section XIII (Reservations of Rights by United States), the United States covenants not to sue or take administrative action against such Respondents pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 7003 of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. § 6973, relating to the Site. These covenants not to sue shall take effect: a) for each Respondent identified in Appendix A, "Respondents Selecting Tier I Covenants," who is not a Settling ATP Respondent, upon receipt of that Respondent's payment as required by Section VII; and b) for each Settling ATP Respondent, upon receipt of that Settling ATP Respondent's first payment as required by Section VII (Payment) of this Settlement Agreement. With respect to each Respondent identified in Appendix A, "Respondents Selecting Tier I Covenants," individually, this covenant not to sue is conditioned upon: a) the satisfactory performance by each Respondent of all obligations under this Settlement Agreement, including but not limited to, payment of all amounts due under Section VII (Payment); and b) the veracity of the information provided to EPA by Respondent relating to Respondent's involvement with the Site. With respect to Settling ATP Respondents individually, this covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by each Settling ATP Respondent. If the Financial Information submitted by any Settling ATP Respondent is subsequently determined by EPA to be false, or in any material respect, inaccurate, that Settling ATP Respondent shall forfeit all payments made pursuant to this Settlement Agreement and this covenant not to sue and the contribution protection in Paragraph 37 of the Settlement Agreement shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling ATP Respondent's false or materially inaccurate information. This covenant not to sue extends only to Respondents identified in Appendix A, "Respondents Selecting Tier I Covenants" and does not extend to any other person.

25. In consideration of the payment that will be made under the terms of this Settlement Agreement by Settling Federal Agency identified in Appendix A, "Respondents Selecting Tier I Covenants," and except as specifically provided in Section XV (Reservations of Rights) of this Settlement Agreement, EPA covenants not to take administrative action against Settling Federal Agency pursuant to Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) or 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. With respect to present and future liability, this covenant shall take effect for Settling Federal Agency upon receipt of Settling Federal Agency's payment as required by Paragraph 16 of this Settlement Agreement. With respect to Settling Federal Agency identified in Appendix A, "Respondents Selecting Tier I Covenants," these covenants not to take administrative action are conditioned upon: a) the complete and satisfactory performance by Settling Federal Agency of its obligations under this Consent Order and b) the veracity of the information provided to EPA by Settling Federal Agency relating to Settling Federal Agency's involvement with the OII Site. These covenants



not to take administrative action extend only to Settling Federal Agency and do not extend to any other person.

#### **XI. TIER II DE MINIMIS COVENANT NOT TO SUE BY UNITED STATES**

26. In consideration of the payments that will be made under the terms of this Settlement Agreement by the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants," and except as specifically provided in Paragraph 27 of this Section and in Section XIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against such Respondents pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. These covenants not to sue shall take effect with respect to each Respondent identified in Appendix B, "Respondents Selecting Tier II Covenants," upon the receipt of the entire payment required of that Respondent pursuant to Section VII (Payment) of this Settlement Agreement. With respect to each Respondent identified in Appendix B, "Respondents Selecting Tier II Covenants," these covenants not to sue are conditioned upon: a) the complete and satisfactory performance by that Respondent of her, his or its obligation under this Settlement Agreement and (b) the veracity of the information provided to the U.S. EPA by that Respondent relating to that Respondent's involvement with the OII Site. These covenants not to sue extend only to the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants," and their successors, and do not extend to any other person.

27. The covenants provided in Paragraph 26 of this Section are subject to the following reservations, in addition to the reservations set forth in Section XIII (Reservation of Rights by United States):

a. United States' pre-certification reservations. Notwithstanding any other provision of this Settlement Agreement, the United States reserves, and this Settlement Agreement is without prejudice to, the right to institute proceedings in this action or in a new action against the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants," or to issue an administrative order seeking to compel any of the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants," to: (1) perform further response actions relating to the Site or (2) reimburse the United States for additional costs of response if, prior to the issuance of the Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to the EPA are discovered, or
- (ii) information, previously unknown to the EPA, is received, in whole or in part,

and these previously unknown conditions or this information, together with any other relevant information, indicate(s) that the Remedial Action is not protective of human health or the environment. If EPA makes such a determination, DTSC reserves, and this Settlement



Agreement is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants" to reimburse the State Covenant Providers for additional costs of response.

b. United States' post-certification reservations. Notwithstanding any other provision of this Settlement Agreement, the United States reserves, and this Settlement Agreement is without prejudice to, the right to institute proceedings in this action or in a new action against the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants," or to issue an administrative order seeking to compel any of the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants," to: (1) perform further response actions relating to the Site or (2) reimburse the United States for additional costs of response if, subsequent to issuance of the Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to the EPA are discovered, or
- (ii) information, previously unknown to the EPA, is received, in whole or in part,

and these previously unknown conditions or this information, together with other relevant information, indicate(s) that the Remedial Action is not protective of human health or the environment. If EPA makes such a determination, DTSC reserves, and this Settlement Agreement is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants" to reimburse the State Covenant Providers for additional costs of response.

c. For purposes of Paragraph 27(a), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the Final ROD was signed and set forth in the Final ROD for the Site and the administrative record supporting the Final ROD. For purposes of Paragraph 27(b) the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Final ROD, the administrative record supporting the Final ROD, and the post-ROD administrative record (if any).

## **XII. COVENANTS BY THE STATE OF CALIFORNIA**

28. The State Covenant Providers provide the following covenants not to sue:

A. De Minimis Covenants Not to Sue by the State for the Respondents and Settling Federal Agency Identified in Appendix A, "Respondents Selecting Tier I Covenants"

In consideration of the actions that will be performed and the payments that will be made by the Respondents and Settling Federal Agency identified in Appendix A, "Respondents Selecting Tier I Covenants" under the terms of the Settlement Agreement, and except as specifically provided in Paragraph 31 (State's General Reservation of Rights), the State Covenant Providers covenant not to sue or take administrative action against the Respondents and Settling Federal Agency identified in Appendix A, "Respondents Selecting Tier I Covenants" pursuant to Section 107 of CERCLA, California Civil Code Section 3494, HWCL, or the HSAA, relating to the Site. With respect to present and future liability, these covenants not to sue shall take effect as to each Respondent and Settling Federal Agency identified in Appendix A, "Respondents Selecting Tier I Covenants" upon receipt by EPA of the entire payment required of that Respondent and Settling Federal Agency identified in Appendix A, Respondents Selecting Tier I Covenants," under Paragraph 15 of Section VII (Payment). With respect to each Respondent and Settling Federal Agency identified in Appendix A, "Respondents Selecting Tier I Covenants," individually, these covenants not to sue are conditioned upon: (1) the satisfactory performance by that Respondent or Settling Federal Agency of all its obligations under this Settlement Agreement; and (2) the veracity of the information provided to EPA by that Respondent or Settling Federal Agency relating to that Respondent's and Settling Federal Agency's involvement with the Site. These covenants not to sue extend only to the Respondents and Settling Federal Agency identified in Appendix A, "Respondents Selecting Tier I Covenants," and do not extend to any other person.

B. De Minimis Covenants Not to Sue by the State for the Respondents Identified in Appendix B, "Respondents Selecting Tier II Covenants"

1. In consideration of the actions that will be performed and the payments that will be made by the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants" under the terms of this Settlement Agreement, and except as specifically provided in Subparagraphs XII.B.2 and XII.B.3 of this Section and in Paragraph 31 (State's General Reservation of Rights), the State Covenant Providers covenant not to sue or take administrative actions against the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants" pursuant to Section 107 of CERCLA, California Civil Code Section 3494, HWCL, or the HSAA for the Site. With respect to present and future liability, these covenants not to sue shall take effect as to each Respondent identified in Appendix B, "Respondents Selecting Tier II Covenants" upon receipt by EPA of the entire payment required of that Respondent identified in Appendix B, "Respondents Selecting Tier II Covenants" under Paragraph 15 of Section VII (Payment). With respect to each Respondent identified in Appendix B, "Respondents Selecting Tier II Covenants," individually, these covenants not to sue are conditioned upon (1) the satisfactory performance by that Respondent of all of its obligations under this Settlement Agreement and (2) the veracity of the information provided to EPA by that Respondent relating to that Respondent's involvement with the Site. These covenants not to sue extend only to the

Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants," and do not extend to any other person.

2. The State's Pre-certification Reservations as to the Respondents Identified in Appendix B, "Respondents Selecting Tier II Covenants"

Notwithstanding any other provision of this Settlement Agreement, subject to federal preemption law, the State Covenant Providers reserve, and this Settlement Agreement is without prejudice to, any rights that the State Covenant Providers may have under applicable law to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants":

a) to perform further response actions not inconsistent with the NCP relating to the Site,  
or

b) to reimburse DTSC for additional costs of response if, prior to Certification of Completion of the Remedial Action:

1) conditions at the Site, previously unknown to DTSC, are discovered, or

2) information, previously unknown to DTSC, is received, in whole or in part, and DTSC determines that these previously unknown conditions or information together with any other relevant information indicates that further response actions are necessary to protect human health or the environment.

3. The State's Post-certification Reservations as to the Respondents Identified in Appendix B, "Respondents Selecting Tier II Covenants"

Notwithstanding any other provision of this Settlement Agreement, subject to federal preemption law, the State Covenant Providers reserve, and this Settlement Agreement is without prejudice to, any rights that the State Covenant Providers may have under applicable law to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants":

a) to perform further response actions not inconsistent with the NCP relating to the Site,  
or

b) to reimburse the State Covenant Providers for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

1) conditions at the Site, previously unknown to the DTSC, are discovered, or

2) information, previously unknown to DTSC, is received, in whole or in part, and DTSC determines that these previously unknown conditions or this information together with other relevant information indicate that further response actions are necessary to protect human health or the environment.

**C. State Assertion of Reserved Rights**

Notwithstanding the other provisions of this Section XII, the State Covenant Providers reserve the following rights:

1. In the event that DTSC or another agency of the State of California is designated the lead agency at the Site pursuant to a cooperative agreement with EPA or pursuant to any provision of federal law, then DTSC or such other State agency may assert the rights reserved by the United States in Paragraph 29 (Reservation of Rights by the United States), in accordance with applicable law.

2. In the event that the United States institutes proceedings or an administrative action pursuant to its reservation of rights under Paragraphs 29-30 (Reservation of Rights by the United States), the State Covenant Providers reserve the right (i) to participate in those proceedings to the extent allowed by law and (ii) to seek relief and cost recovery subject to the conditions and limitations set forth in Paragraphs 29-30.

**XIII. RESERVATIONS OF RIGHTS BY UNITED STATES**

29. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents, and EPA and the federal natural resource trustees reserve, and this Settlement Agreement is without prejudice to, all rights against Settling Federal Agency, with respect to all matters not expressly included within Sections X and XI. Notwithstanding any other provision of this Settlement Agreement, the United States reserves all rights against Respondents, and EPA and the federal natural resource trustees reserve all rights against Settling Federal Agency, with respect to:

- a. liability for failure to meet a requirement of this Settlement Agreement;
- b. liability arising from the past, present, or future disposal, release, or threat of release of waste materials outside of the Site;
- c. criminal liability;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or
- e. liability based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation,



treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Respondent.

30. Notwithstanding any other provision in this Settlement Agreement, the United States reserves, and this Settlement Agreement is without prejudice to, the right to institute judicial or administrative proceedings against any individual Respondent seeking to compel that Respondent to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if information is discovered which indicates that such Respondent contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Respondent no longer qualifies as a *de minimis* party at the Site because such Respondent contributed greater than 110,000 gallons of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site. Notwithstanding any other provision of this Settlement Agreement, the United States reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen proceedings against any individual Settling ATP Respondent in this action or in a new action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information provided by any such Settling ATP Respondent, or the financial certification made by any such Settling ATP Respondent in Section IX of the Settlement Agreement is false or, in a material respect, inaccurate.

### 31. The State's General Reservations of Rights

The State Covenant Providers' covenants not to sue set forth in this Settlement Agreement do not pertain to any matters other than those expressly specified therein. The State Covenant Providers reserve, and this Settlement Agreement is without prejudice to, all rights against the Respondents and Settling Federal Agency with respect to all other matters, including, but not limited to, the following:

- a. liability for failure to meet a requirement of this Settlement Agreement;
- b. liability arising from the past, present, or future disposal, release, or threat of release of waste materials outside of the Site;
- c. liability based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Materials at or in connection with the Site, after signature of this Settlement Agreement by the Respondents or Settling Federal Agency;
- d. criminal liability; or
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

This Settlement Agreement is without prejudice to, all rights against the Respondents and Settling Federal Agency with respect to claims by any agency or agent of the State of California other than DTSC or the State Accounts, except to the extent that another agency of the State of California becomes DTSC's successor-in-interest with respect to the Site.

#### **XIV. COVENANT NOT TO SUE BY RESPONDENTS**

32. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, the State Covenant Providers, or their contractors or employees, and Settling Federal Agency agrees not to assert any claims or causes of action against EPA, the State Covenant Providers, or their contractors or employees, with respect to the Site or this Settlement Agreement including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Site.

Except as provided in Paragraph 34 (Waiver of Claims) and Paragraph 36 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIII (Reservation of Rights by United States), other than in Paragraph 29(a) (claims for failure to meet a requirement of the Settlement Agreement), or 29(c) (criminal liability), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

33. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

34. Respondents and Settling Federal Agency agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Section 107(a) or 113 of CERCLA) that they may have for all matters relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Respondent or Settling Federal Agency may have against any person if such person asserts or has

asserted a claim or cause of action relating to the Site against such Respondent or Settling Federal Agency.

#### **XV. EFFECT OF SETTLEMENT/CONTRIBUTION**

35. Except as provided in Paragraph 34 (Waiver of Claims), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Paragraph 34 (Waiver of Claims), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

36. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents and Settling Federal Agency shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraphs 24 and 25.

37. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), and that each Respondent and Settling Federal Agency is entitled, as of the Effective Date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement with respect to the Respondents and Settling Federal Agency identified in Appendix A, "Respondents Selecting Tier I Covenants," are as follows: all response actions taken by the United States, the State Covenant Providers, and private parties, and all response costs incurred and to be incurred by the United States, the State Covenant Providers, and private parties, at or in connection with the Site. The "matters addressed" in this Settlement Agreement with respect to the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants," are as follows: all response actions taken by the United States, the State Covenant Providers, and private parties, and all response costs incurred and to be incurred by the United States, the State Covenant Providers, and private parties, at or in connection with the Site, subject to the reservations expressed in Paragraph 26 of Section XI (Tier II De Minimis Covenants Not to Sue by the United States). Provided, however, that if the United States exercises rights under the reservations in Section XIII (Reservations of Rights by United States), other than in Paragraph 29(a) (claims for failure to meet a requirement of the Agreement) or 29(c) (criminal liability), the "matters



addressed" in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation. In the event that a Respondent's waiver of claims becomes inapplicable in accordance with Paragraph 34, the Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Respondent has resolved its liability to the United States, as of the Effective Date, for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), for "matters addressed" as defined above.

38. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days of service of the complaint or claim upon such Respondent. In addition, each Respondent shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

#### **XVI. PARTIES BOUND**

39. This Settlement Agreement shall apply to and be binding upon EPA, the State Covenant Providers, and upon Respondents and Settling Federal Agency and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of a Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally the party represented by him or her.

#### **XVII. INTEGRATION/APPENDICES**

40. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

"Appendix A" is the list of Tier I De Minimis Respondents and Settling Federal Agency.

"Appendix B" is the list of Tier II De Minimis Respondents.

"Appendix C" is the list of Respondents, Settling Federal Agency, and payment schedule.

"Appendix D" is the Contaminant List.



"Appendix E" is the list of Settling ATP Respondents.

**XVIII. PUBLIC COMMENT**

41. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw or withhold its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

**XIX. ATTORNEY GENERAL APPROVAL**

42. The Attorney General or his designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

**XX. EFFECTIVE DATE**

43. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice to Respondents and, on behalf of the Settling Federal Agency, the Environmental Defense Section of the U.S. Department of Justice, that the public comment period pursuant to Paragraph 41 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED AND ORDERED:

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

By:

Kathleen Salyer

Kathleen Salyer

Assistant Director

California Superfund Division Site Cleanup Branch

U.S. EPA Region IX

75 Hawthorne Street

San Francisco, CA 94105

1/9/13  
Date

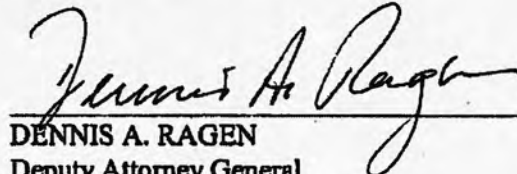
**FOR THE STATE OF CALIFORNIA**

1/08/2013  
Date

  
STEVEN W. LAVINGER

Performance Manager  
Chatsworth Office Cleanup Program  
California Department of Toxic Substance Control  
9211 Oakdale Avenue  
Chatsworth, California 91311-6505

12-20-12  
Date

  
DENNIS A. RAGEN  
Deputy Attorney General  
110 West A Street, Suite 1100  
San Diego, California 92101

# ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT NO. 2011-06

## Appendix A

### Respondents Selecting Tier I Covenants

The parties listed in the "Current Entity" column are considered Respondents solely with respect to wastes generated by their associated entities listed in the "Original Generator(s)" column. Any liability for wastes generated by any entities not listed in the "Original Generator(s)" column is expressly excluded from this Administrative Settlement Agreement and Order on Consent.

Current Entity	Original Generator(s)	Volume (gallons)	Settlement Amount
American Marble & Onyx Company, Inc. (1)	American Marble	20,880	\$9,000
Arroyo Car Wash Corporation (2)	Arroyo Car Wash	6,720	\$11,221
Bay Cities Container Corporation (1)	Arrow Container	66,242	\$25,000
Brett's Incorporated (1)	Wash World	5,000	\$500
C. E. Encell Auto Parts Service, Inc. (1)	Encell Auto Parts	6,300	\$500
Cal-Chem Cleaning Co., Inc. (1)	Cal. Chem. Cleaners	16,050	\$8,100
Canplas, LLC	R & G Sloane Manufacturing Co.	7,500	\$25,151
Consumers Oil Company (1)	Consumer Oil	66,780	\$1,500
Cormier Chevrolet Company (1)	Cormier Chevrolet	92,200	\$7,000
Corradini Corp., fka A. Corradini & Sons, aka Corradini Corporation	A. Corradini & Sons	68,460	\$241,663
H.W. Hull & Sons, Inc. (1)	H.W. Hull & Sons, Inc.	42,630	\$250
Hacienda Car Wash, Inc. (1)	Hacienda Car Wash	4,200	\$1,000
Hiro's Transmission, Inc. (1)	Hiro's Transmission	8,300	\$500
International Paper Company	Federal Envelope	6,720	\$23,721
International Transportation Service, Inc.	International Trans. Service	5,040	\$16,901
John Crane, Inc.	Burgmaster	91,716	\$307,569
Koosed Enterprises, Inc. (1)	Lloyd's Uniform Supply	18,900	\$500
Los Feliz Car Wash	Los Feliz Car Wash	10,000	\$33,535
Margus Auto Electric Exchange, Inc. (1)	Margus Engine Rebuilders	18,230	\$1,500
Midway Drilling & Pump Company (1)	Midway Drilling Co.	34,440	\$1,500
MK Diamond Products, Inc. (3)	M.K. Diamond	11,004	\$876
National Aeronautics and Space Administration	Jet Propulsion Labs	9,400	\$31,522
National Credit Corporation (1)	Paramount Plating Corp.	30,450	\$22,500
North Hills Car Wash Company (1)	North Hills Car Wash	52,080	\$1,500
Oil Well Service Company	Oil Well Service	4,200	\$14,084
Pacific Coast Drum Company (1)	Pacific Coast Drum	39,951	\$10,000
Pentair, Inc.	Hill Refrigeration	21,420	\$75,612
Porcelain Metals Corporation (1)	CAMEO of California	82,520	\$1,000
Ralphs Grocery Company	Alpha Beta Market, Ralph's Grocery Comp., The Boys Market	48,040	\$161,101
RCG Electronics Corp., dba Washington Caterers (1)	Washington Catering	22,974	\$500
Resco Holdings, LLC	Pullman Kellogg and Pullman Power Products	4,620	\$15,492
Ryder System, Inc.	Saunders Leasing, Vernon Motor Parts	12,180	\$40,845
Solar Turbines International Company	Solar Co.	6,510	\$21,831
Standard Graphics Arts Corporation (1)	Standard Paper Box	18,690	\$1,000



**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT NO. 2011-06****Appendix A****Respondents Selecting Tier I Covenants**

The parties listed in the "Current Entity" column are considered Respondents solely with respect to wastes generated by their associated entities listed in the "Original Generator(s)" column. Any liability for wastes generated by any entities not listed in the "Original Generator(s)" column is expressly excluded from this Administrative Settlement Agreement and Order on Consent.

<b>Current Entity</b>	<b>Original Generator(s)</b>	<b>Volume (gallons)</b>	<b>Settlement Amount</b>
Talley Brothers, Inc. (1)	Talley Bros.	56,200	\$1,000
Trans Harbor, Inc. (1)	Trans Harbor	42,000	\$15,000
Treasure-Craft (1)	Treasure Craft	94,290	\$38,896
V & M Precision Grinding Co. (1)	V & M Precision Grinding	88,820	\$1,000
V-M Enterprises, Inc. (1)	Memley Plating	15,800	\$7,500
Valeant Pharmaceuticals International	ICN Pharmaceuticals	5,460	\$19,273
Valley Proteins (DE), Inc.	Peterson Rendering Co.	12,600	\$44,478
Vernon Sanitation Supply Co., Inc. (1)	Vernon Ind. Uniform Co.	37,815	\$1,500
Western & Fourth Car Wash, Inc. (1)	Fourth & Western Car Wash	8,400	\$1,500
Westwood Car Wash (1)	Westwood Car Wash	9,450	\$250
Wyeth, LLC	Boyle Midway	93,755	\$314,407

**Footnote 1:** The settlement payment shown for this company reflects EPA's determination that a reduction of the payment is justified based upon the company's financial condition.

**Footnote 2:** The settlement payment shown for this company reflects a credit for amounts paid by it or by one of its listed related entities to the OII Steering Committee.

**Footnote 3:** The settlement payment shown for this company reflects a credit for amounts paid by it or by one of its listed related entities to IT Corporation.

# ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT NO. 2011-06

## Appendix B

### Respondents Selecting Tier II Covenants

The parties listed in the "Current Entity" column are considered Respondents solely with respect to wastes generated by their associated entities listed in the "Original Generator(s)" column. Any liability for wastes generated by any entities not listed in the "Original Generator(s)" column is expressly excluded from this Administrative Settlement Agreement and Order on Consent.

Current Entity	Original Generator(s)	Volume (gallons)	Settlement Amount
George J. Peckham, Jr.	George J. Peckham, Jr.	12,600	\$40,194
R. R. Kellogg, Inc.	Bubble Machine Car Wash	8,400	\$25,456

# ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT NO. 2011-06

## Appendix C Respondents

The parties listed in the "Current Entity" column are considered Respondents solely with respect to wastes generated by their associated entities listed in the "Original Generator(s)" column. Any liability for wastes generated by any entities not listed in the "Original Generator(s)" column is expressly excluded from this Administrative Settlement Agreement and Order on Consent.

Current Entity	Original Generator(s)	Volume (gallons)	Settlement Amount
American Marble & Onyx Company, Inc. (1)	American Marble	20,880	\$9,000.00
Arroyo Car Wash Corporation (2)	Arroyo Car Wash	6,720	\$11,221.00
Bay Cities Container Corporation (1)	Arrow Container	66,242	\$25,000.00
Brett's Incorporated (1)	Wash World	5,000	\$500.00
C. E. Encell Auto Parts Service, Inc. (1)	Encell Auto Parts	6,300	\$500.00
Cal-Chem Cleaning Co., Inc.(1)	Cal. Chem. Cleaners	16,050	\$8,100.00
Canplas, LLC	R & G Sloane Manufacturing Co.	7,500	\$25,151.00
Consumers Oil Company (1)	Consumer Oil	66,780	\$1,500.00
Cormier Chevrolet Company (1)	Cormier Chevrolet	92,200	\$7,000.00
Corradini Corp., fka A. Corradini & Sons, aka Corradini Corporation	A. Corradini & Sons	68,460	\$241,663.00
George J. Peckham, Jr.	George J. Peckham, Jr.	12,600	\$40,194.00
H.W. Hull & Sons, Inc. (1)	H.W. Hull & Sons, Inc.	42,630	\$250.00
Hacienda Car Wash, Inc. (1)	Hacienda Car Wash	4,200	\$1,000.00
Hiro's Transmission, Inc. (1)	Hiro's Transmission	8,300	\$500.00
International Paper Company	Federal Envelope	6,720	\$23,721.00
International Transportation Service, Inc.	International Trans. Service	5,040	\$16,901.00
John Crane, Inc.	Burgmaster	91,716	\$307,569.00
Koosed Enterprises, Inc. (1)	Lloyd's Uniform Supply	18,900	\$500.00
Los Feliz Car Wash	Los Feliz Car Wash	10,000	\$33,535.00
Margus Auto Electric Exchange, Inc. (1)	Margus Engine Rebuilders	18,230	\$1,500.00
Midway Drilling & Pump Company (1)	Midway Drilling Co.	34,440	\$1,500.00
MK Diamond Products, Inc. (3)	M.K. Diamond	11,004	\$876.00
National Aeronautics and Space Administration	Jet Propulsion Labs	9,400	\$31,522.00
National Credit Corporation (1)	Paramount Plating Corp.	30,450	\$22,500.00
North Hills Car Wash Company (1)	North Hills Car Wash	52,080	\$1,500.00
Oil Well Service Company	Oil Well Service	4,200	\$14,084.00
Pacific Coast Drum Company (1)	Pacific Coast Drum	39,951	\$10,000.00
Pentair, Inc.	Hill Refrigeration	21,420	\$75,612.00
Porcelain Metals Corporation (1)	CAMEO of California	82,520	\$1,000.00
R. R. Kellogg, Inc.	Bubble Machine Car Wash	8,400	\$25,456.00
Ralphs Grocery Company	Alpha Beta Market, Ralph's Grocery Comp., The Boys Market	48,040	\$161,101.00
RCG Electronics Corp., dba Washington Caterers (1)	Washington Catering	22,974	\$500.00
Resco Holdings, LLC	Pullman Kellogg and Pullman Power Products	4,620	\$15,492.00
Ryder System, Inc.	Saunders Leasing, Vernon Motor Parts	12,180	\$40,845.00

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT NO. 2011-06****Appendix C  
Respondents**

The parties listed in the "Current Entity" column are considered Respondents solely with respect to wastes generated by their associated entities listed in the "Original Generator(s)" column. Any liability for wastes generated by any entities not listed in the "Original Generator(s)" column is expressly excluded from this Administrative Settlement Agreement and Order on Consent.

<b>Current Entity</b>	<b>Original Generator(s)</b>	<b>Volume (gallons)</b>	<b>Settlement Amount</b>
Solar Turbines International Company	Solar Co.	6,510	\$21,831.00
Standard Graphics Arts Corporation (1)	Standard Paper Box	18,690	\$1,000.00
Talley Brothers, Inc. (1)	Talley Bros.	56,200	\$1,000.00
Trans Harbor, Inc. (1)	Trans Harbor	42,000	\$15,000.00
Treasure-Craft (1)	Treasure Craft	94,290	\$38,896.00
V & M Precision Grinding Co. (1)	V & M Precision Grinding	88,820	\$1,000.00
V-M Enterprises, Inc. (1)	Memley Plating	15,800	\$7,500.00
Valeant Pharmaceuticals International	ICN Pharmaceuticals	5,460	\$19,273.00
Valley Proteins (DE), Inc.	Peterson Rendering Co.	12,600	\$44,478.00
Vernon Sanitation Supply Co., Inc. (1)	Vernon Ind. Uniform Co.	37,815	\$1,500.00
Western & Fourth Car Wash, Inc. (1)	Fourth & Western Car Wash	8,400	\$1,500.00
Westwood Car Wash (1)	Westwood Car Wash	9,450	\$250.00
Wyeth, LLC	Boyle Midway	93,755	\$314,407.00

**Footnote 1:** The settlement payment shown for this company reflects EPA's determination that a reduction of the payment is justified based upon the company's financial condition.

**Footnote 2:** The settlement payment shown for this company reflects a credit for amounts paid by it or by one of its listed related entities to the OII Steering Committee.

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**APPENDIX D - ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON  
CONSENT CONTAMINANTS LIST**

Chemical Name		
<b>Organic Constituents</b>	4,4'-DDT	Chlorobenzene
1,1,1,2-Tetrachloroethane	4-Methyl-2-pentanone	Chloroethane
1,1,1-Trichloroethane	4-Methylphenol	Chloroform
1,1,2-Trichloroethane	4-Nitroaniline	Chloromethane
1,1-Dichloroethane	Acenaphthene	Chrysene
1,1-Dichloroethylene	Acetone	cis-1,2-Dichloroethylene
1,2,4-Trichlorobenzene	Aldrin	cis-1,3-Dichloropropene
1,2-Dibromoethane	Anthracene	Di-n-butylphthalate
1,2-Dichlorobenzene	Benzene	Di-n-octylphthalate
1,2-Dichloroethane	Benzo(a)anthracene	Dibenzofuran
1,2-Dichloroethylene (Total)	Benzo(a)pyrene	Dibromochloromethane
1,2-Dichloroethylene, trans-	Benzo(b)fluoranthene	Dichlorodifluoromethane
1,2-Dichloropropane	Benzo(g,h,i)perylene	Dieldrin
1,3-Dichlorobenzene	Benzo(k)fluoranthene	Diethylphthalate
1,3-Dichloropropene, trans-	Benzoic acid	Dimethylphthalate
1,4-Chlorotoluene	Benzyl alcohol	Endosulfan I
1,4-Dichlorobenzene	Benzyl chloride	Endosulfan II
1,4-Dioxane	Beta-BHC	Endosulfan sulfate
2,4-Dimethylphenol	BHC, alpha-	Endrin
2-Butanone	BHC, delta-	Endrin aldehyde
2-Hexanone	BHC, gamma- (Lindane)	Ethylbenzene
2-Methylnaphthalene	bis(2-Ethylhexyl)phthalate	Fluoranthene
2-Methylphenol	Butylbenzylphthalate	Fluorene
3,3'-Dichlorobenzidine	Carbazole	Heptachlor
4,4'-DDD	Carbon disulfide	Heptachlor epoxide
4,4'-DDE	Carbon tetrachloride	Hexachlorobutadiene
	Chlordane	Isophorone
	Chlordane, gamma-	

Methoxychlor
Methylene chloride
N-Nitrosodimethylamine
N-Nitrosodiphenylamine
Naphthalene
Pentachlorophenol
Phenanthrene
Phenol
Purgeable Organic Halogens
Pyrene
Styrene
Tetrachloroethylene
Toluene
Total Organic Halogens
Trichloroethylene
Trichlorofluoromethane (Freon 11)
Vinyl acetate
Vinyl chloride
Xylene, m,p,-
Xylene, m-
Xylene, o-
Xylenes, p-
Xylenes, total-
<b>Inorganic Constituents</b>
Aluminum
Ammonia nitrogen (as N)
Antimony
Arsenic
Barium
Beryllium

Cadmium
Calcium
Chloride
Chromium (Total)
Cobalt
Copper
Cyanide
Iron
Lead
Magnesium
Manganese
Mercury
Nickel
Nitrate
Nitrite (as N)
Potassium
Selenium
Silver
Sodium
Sulfate
Sulfide
Thallium
Tin
Vanadium
Zinc

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT NO. 2011-06****Appendix E**  
**Settling ATP Respondents**

The parties listed in the "Current Entity" column are considered Respondents solely with respect to wastes generated by their associated entities listed in the "Original Generator(s)" column. Any liability for wastes generated by any entities not listed in the "Original Generator(s)" column is expressly excluded from this Administrative Settlement Agreement and Order on Consent.

<b>Current Entity</b>	<b>Original Generator(s)</b>	<b>Volume (gallons)</b>	<b>Settlement Amount</b>
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Bay Cities Container Corporation	Arrow Container	66,242	\$25,000.00
Brett's Incorporated	Wash World	5,000	\$500.00
C. E. Encell Auto Parts Service, Inc.	Encell Auto Parts	6,300	\$500.00
Cal-Chem Cleaning Co., Inc.	Cal. Chem. Cleaners	16,050	\$8,100.00
Consumers Oil Company	Consumer Oil	66,780	\$1,500.00
Cormier Chevrolet Company	Cormier Chevrolet	92,200	\$7,000.00
H.W. Hull & Sons, Inc.	H.W. Hull & Sons, Inc.	42,630	\$250.00
Hacienda Car Wash, Inc.	Hacienda Car Wash	4,200	\$1,000.00
Hiro's Transmission, Inc.	Hiro's Transmission	8,300	\$500.00
Koosed Enterprises, Inc.	Lloyd's Uniform Supply	18,900	\$500.00
Margus Auto Electric Exchange, Inc.	Margus Engine Rebuilders	18,230	\$1,500.00
Midway Drilling & Pump Company	Midway Drilling Co.	34,440	\$1,500.00
National Credit Corporation	Paramount Plating Corp.	30,450	\$22,500.00
North Hills Car Wash Company	North Hills Car Wash	52,080	\$1,500.00
Pacific Coast Drum Company	Pacific Coast Drum	39,951	\$10,000.00
Porcelain Metals Corporation	CAMEO of California	82,520	\$1,000.00
RCG Electronics Corp., dba Washington Caterers	Washington Catering	22,974	\$500.00
Standard Graphics Arts Corporation	Standard Paper Box	18,690	\$1,000.00
Talley Brothers, Inc.	Talley Bros.	56,200	\$1,000.00
Trans Harbor, Inc.	Trans Harbor	42,000	\$15,000.00
Treasure-Craft	Treasure Craft	94,290	\$38,896.00
V & M Precision Grinding Co.	V & M Precision Grinding	88,820	\$1,000.00
V-M Enterprises, Inc.	Memley Plating	15,800	\$7,500.00
Vernon Sanitation Supply Co., Inc.	Vernon Ind. Uniform Co.	37,815	\$1,500.00
Western & Fourth Car Wash, Inc.	Fourth & Western Car Wash	8,400	\$1,500.00
Westwood Car Wash	Westwood Car Wash	9,450	\$250.00